

1 THE WITNESS: I've got a lot of  
2 them up here. Which one?

3 MR. PHILLIPS: It is the one that  
4 is the e-mail from Bill Simon to you.

5 THE WITNESS: Yes. Yes?

6 FURTHER REDIRECT EXAMINATION

7 BY MR. PHILLIPS:

8 Q Let me ask a couple of questions  
9 here. As you see the move for the Sportsman's  
10 Channel here, was that a move to digital  
11 preferred on a national basis?

12 A No. It was a local market move.

13 Q Golf and Versus, are they  
14 distributed widely by Comcast on digital  
15 preferred or better on a national basis?

16 A To my knowledge, they have uniform  
17 distribution on the widest possible level of  
18 distribution, which would be above this.

19 Q And when you had your meeting in  
20 May with Comcast, what was your proposal for  
21 distribution?

22 A Our proposal for distribution was

1 on a national basis, like the Comcast-owned  
2 networks.

3 Q Now, I think there is some  
4 confusion here. So let me just go back to it.  
5 What is it that Mr. Bond said to you as a  
6 proposal or whatever in June, on June 9th,  
7 when he called you back?

8 A He said that he wasn't going to  
9 accept a move to either D1 or D0 and that they  
10 were going to leave us exactly where we were  
11 but that we were more than welcome to go  
12 discuss, attempting to get greater  
13 distribution on a local level. We had done  
14 that many, many times before.

15 Q Had you ever heard that before  
16 that you should go try to get greater  
17 distribution at a local level from anyone at  
18 Comcast?

19 A Yes. We had heard it many times,  
20 virtually all the time.

21 Q So did you regard this as a  
22 counter proposal of any sort?

1           A       Not at all. It's something that  
2       we had been doing regularly and we had  
3       attempted to do and futilely. We had had  
4       local markets who said they wanted to launch,  
5       who tried to launch, and told us that they  
6       were stopped by national.

7                   It is our understanding that as a  
8       rule, this may have been an exception to the  
9       rule. We, unfortunately, weren't. The local  
10      upgrades were not available.

11                   MR. CARROLL: Your Honor, may I?

12                   JUDGE SIPPEL: Yes?

13                   MR. CARROLL: The witness held up  
14      a document. Then he said, "this" in his  
15      answer. I don't think it will be reflected on  
16      the transcript.

17                   JUDGE SIPPEL: Which one?

18                   THE WITNESS: Number 707, the one  
19      that we were discussing, I believe.

20                   MR. CARROLL: Thank you, Your  
21      Honor.

22                   THE WITNESS: Thank you.

1 MR. PHILLIPS: Bear with me one  
2 second, Your Honor. I'm waiting for --

3 (Pause.)

4 BY MR. PHILLIPS:

5 Q Mr. Solomon, can I refer you back  
6 to 708, which is the Patrick Wilson e-mail  
7 from June 17th, 2010?

8 JUDGE SIPPEL: It is one page.

9 THE WITNESS: Thank you, Your  
10 Honor. Yes. Thank you.

11 BY MR. PHILLIPS:

12 Q Now, I want to focus you on the  
13 same language that Mr. Carroll did, which you  
14 write, "Despite me forcing concessions on  
15 things that I don't think we should have,  
16 beginning with equity." Do you see that?

17 A I do.

18 Q Does that refer to you forcing  
19 concessions in your negotiations with AT&T?

20 A I don't remember any discussions  
21 of us. I certainly don't remember discussions  
22 of granting any equity. They may have been

1 attempting to force us to grant equity.

2 Q And do you believe that what this  
3 might be, that you forced them to concede that  
4 you weren't going to give them equity in  
5 return for distribution here?

6 MR. CARROLL: You are leading your  
7 own witness. Objection.

8 THE WITNESS: It certainly is more  
9 logical --

10 JUDGE SIPPEL: Wait a minute.  
11 Wait a minute. Whoa, whoa, whoa. We have an  
12 objection.

13 MR. PHILLIPS: Your Honor, I will  
14 rephrase.

15 JUDGE SIPPEL: Rephrase it. Go  
16 ahead. Let's let him rephrase it.

17 BY MR. PHILLIPS:

18 Q Mr. Solomon, can you describe for  
19 me what you believe you may have been forcing  
20 concessions on?

21 A I know that we had not  
22 contemplated equity for carriage for AT&T at

1       this point in our evolution. AT&T may have  
2       been asking us for equity and attempting to  
3       push it into the agreement.

4               Q       And, in fact, with the AT&T  
5       agreement, do you know whether or not there  
6       was equity given?

7               A       There was not.

8               Q       Now, I want to go back.

9                       MR. PHILLIPS: And, Your Honor,  
10       just bear with me one second because my  
11       colleagues handed me a document. And I'm not  
12       sure I understand it.

13                      BY MR. PHILLIPS:

14               Q       I want to go back to your  
15       testimony for a second, footnote 3. Mr.  
16       Carroll spent a little bit of time on this  
17       equity for carriage point.

18                      JUDGE SIPPEL: This is in his  
19       direct testimony, right?

20                      MR. PHILLIPS: His direct  
21       testimony, the footnote 3.

22                      BY MR. PHILLIPS:

1           Q       Now, let me just start with  
2       beginning with, Mr. Solomon, what was your  
3       view in 2005 and 2006 about doing an equity  
4       for carriage deal?

5           A       We certainly would have been open  
6       to it at that point in time. I think we were  
7       encouraging it.

8           Q       And in your negotiations with  
9       DirecTV and Dish regarding distribution, do  
10      you recall what time in those negotiations the  
11      distribution level was set?

12          A       It became clear that you can tell  
13      by how early an idea that was that equity was  
14      not going to be the principal factor in  
15      DirecTV or Dish making a decision. They  
16      wanted to know if the service was worthy of  
17      carriage. They apparently get offered equity  
18      all the time by people. And we were no  
19      different as an independent network.

20                   So the issue was, is the network  
21      strong enough? Is its value proposition  
22      strong enough? And the real debate for us

1 was, can we get a level of distribution that  
2 is sufficient? And that was really what the  
3 negotiations were all about up front.

4 Once they were satisfied -- and  
5 there was a lot of separation between those  
6 two deals -- we arranged for the carriage  
7 agreement and the level of penetration and the  
8 other things that go along with the carriage  
9 agreement.

10 And then, subsequently, as a  
11 function of the value proposition, we offered  
12 the option of these two companies, first Dish  
13 Network and then DirecTV, the option to trade  
14 the free period that all the other  
15 distributors enjoyed as well that has real  
16 value, to buy back the free period by paying  
17 us immediately upon launching or close to it  
18 in exchange for equity.

19 So they took something that was of  
20 real value and, instead of taking many months  
21 of free distribution, which at the  
22 distribution levels we were talking about



1 would have been significant dollars, and put  
2 it into a formula to trade it for a position  
3 in the company.

4 Q So is it --

5 MR. PHILLIPS: I'm sorry, Your  
6 Honor. Go ahead.

7 JUDGE SIPPEL: Are those  
8 positions, is that common or preferred stock?  
9 How are those things --

10 THE WITNESS: It's nonvoting. Oh,  
11 I'm sorry. I believe it's --

12 JUDGE SIPPEL: Oh, I'm sorry. I'm  
13 putting words in your mouth.

14 THE WITNESS: Well, no. Just  
15 again we keep bouncing back and forth between  
16 things that are confidential or not  
17 confidential. So I don't know.

18 JUDGE SIPPEL: Okay. Well, then,  
19 we are going to have to excuse the gentlemen  
20 again. I'm terribly sorry.

21 (Whereupon, the proceedings  
22 reconvened in closed session.)

1                   CLOSED SESSION

2                   JUDGE SIPPEL: All right. Let's  
3 go.

4                   THE WITNESS: There are complex  
5 deals in terms of the class of equity, but --

6                   JUDGE SIPPEL: Try me.

7                   THE WITNESS: Well, they may be  
8 too complex for me because I am not a business  
9 major.

10                  JUDGE SIPPEL: Well, do the best  
11 you can.

12                  THE WITNESS: But what I can tell  
13 you is that they received -- they are  
14 non-controlling interests. And they did  
15 receive, they each received, a board position  
16 for it.

17                  JUDGE SIPPEL: A board position?

18                  THE WITNESS: Correct. Each one  
19 has a board position.

20                  JUDGE SIPPEL: Each one of who has  
21 --

22                  THE WITNESS: Each one of the two:

1 one from DirectTV and one from Dish.

2 JUDGE SIPPEL: Now, that is part  
3 of the equity deal?

4 THE WITNESS: It was part of the  
5 value exchange again for the free period.

6 JUDGE SIPPEL: Okay. But, as far  
7 as the value exchanges, you get a C on the  
8 board. And you get stock. Is that right,  
9 stock in the company?

10 THE WITNESS: They got shares in  
11 the company, correct.

12 JUDGE SIPPEL: And my question is,  
13 the stock, is it voting stock or nonvoting  
14 stock? I said preferred, but is it voting or  
15 nonvoting?

16 THE WITNESS: It would be voting.

17 JUDGE SIPPEL: Voting stock?

18 THE WITNESS: Yes.

19 JUDGE SIPPEL: Now, can you tell  
20 us approximately what percent -- do you want  
21 to say it in percentage or number of shares?  
22 Probably the easiest way to ask you is

1 percentage-wise.

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: What percentage of  
4 voting shares did Dish get, let's say? We'll  
5 start with that.

6 THE WITNESS: I think it's in the  
7 range of about .

8 JUDGE SIPPEL: ?

9 THE WITNESS: I think that's  
10 correct.

11 JUDGE SIPPEL: And what about the  
12 other one?

13 THE WITNESS: It's more. I think  
14 it was about .

15 JUDGE SIPPEL: So you add them up.  
16 You get about ,  
17 correct?

18 THE WITNESS: Yes. Yes.

19 JUDGE SIPPEL: Plus two spots on  
20 the board?

21 THE WITNESS: One each, correct.

22 JUDGE SIPPEL: One each.

1 THE WITNESS: Out of ten.

2 JUDGE SIPPEL: Out of ten? There  
3 were eight, and now there are ten?

4 THE WITNESS: Correct.

5 JUDGE SIPPEL: Now, do they get --  
6 I guess they do. They get to vote on anything  
7 that the Tennis Channel does. It's not just  
8 narrow frame of business, but whatever you do?

9 THE WITNESS: Well, we -- first of  
10 all, there aren't a lot of board votes in  
11 general. We tend to run the company pretty  
12 much as a management team. When it comes to  
13 decisions related to distribution, both of  
14 them recuse themselves, usually from  
15 discussions related to distribution. Both of  
16 those two recuse themselves as a rule.

17 JUDGE SIPPEL: They have an  
18 interest to protect. Who is going to protect  
19 their interests if they recuse themselves?

20 THE WITNESS: I can't answer that  
21 question only to say that they have confidence  
22 that we're running the company in a way that

1       it's never been an issue, never been a  
2       problem.

3                   JUDGE SIPPEL: Well, do they  
4       volunteer or do they choose to recuse or is  
5       that part of the deal that they have to  
6       recuse?

7                   THE WITNESS: I'm not sure if it's  
8       written in, but they always have. There's  
9       never been a problem or a question. I'm not  
10      sure if it's written. We certainly conduct  
11      ourselves as if it is written. There has  
12      never been a case where it has been  
13      questioned. If it is something that is  
14      sensitive, we ask them to recuse themselves  
15      and appear happy to do it.

16                   Again, there aren't too many --  
17      we're a small company. We don't have big,  
18      fancy board meetings. And moot of the time  
19      we're having discussions. And there are very  
20      rarely times when we have formal votes. I  
21      think you could count them on one hand in  
22      terms of the way that we run the company.

1 JUDGE SIPPEL: Anybody want to  
2 shed any light on this? I mean, they must be  
3 -- somebody must have gone through the minutes  
4 and the incorporation documents, documents of  
5 incorporation. What are these folks getting?  
6 They're getting voting shares.

7 Do they have to recuse? Is that  
8 part of --

9 MR. PHILLIPS: Your Honor, I don't  
10 know that Mr. Carroll would disagree with me,  
11 but I don't think that -- I think that they  
12 always do recuse themselves, but I think that  
13 the reason that we're not arguing about it is  
14 because there is not any issue in the case  
15 about it.

16 MR. CARROLL: Well, I am not sure  
17 I would agree with that. And I have seen no  
18 legal documents that require any recusal.

19 JUDGE SIPPEL: See, the problem I  
20 have is that I feel I am getting half a loaf.  
21 He's explaining what it's like, but then he's  
22 not explaining everything what it's like. Is

1       it that difficult to come up with an  
2       explanation?

3               MR. PHILLIPS: We can try to find  
4       out, Your Honor, certainly if they're required  
5       to recuse themselves or if they just do it as  
6       a matter of practice, if Your Honor would like  
7       to know that.

8               I know that, as I think Mr.  
9       Solomon said, -- and I can go over this again  
10      -- I don't think there's ever been any issue  
11      about whether or not they got equity and  
12      whether or not Tennis Channel cared whether  
13      they got equity for carriage.

14              It's just a question that Mr.  
15      Carroll has picked up on the phrasing of this  
16      particular footnote to say it's incorrect.  
17      And I have been trying to explain why it is  
18      correct.

19              JUDGE SIPPEL: Hang on. I think  
20      you can blame it on me. Right now I'm just  
21      stuck on this because you got -- I mean, I  
22      know something about what voting shares are.



1                   And I know what                   of a  
2     company is. It's a pretty -- you know, if you  
3     get bones pickings                   of your company,  
4     you had better watch the next meeting.

5                   (Laughter.)

6                   MR. PHILLIPS: It is different in  
7     a public company than a private company.

8                   JUDGE SIPPEL: All right. I  
9     concede that, absolutely, totally different.  
10    But the fact still remains that            in  
11    voting shares is a significant position. And  
12    it seems to be to really explain what the  
13    nature of those                   are that the record  
14    has to show whether or not this recusal right  
15    or recusal obligation is a requirement that  
16    was imposed on these people, on these two new  
17    shareholders, or whether it is some kind of a  
18    voluntary workout.

19                   BY MR. PHILLIPS:

20                   Q     Mr. Solomon, you say you never had  
21    the issue arise, but you don't know either  
22    way?

1           A       I don't know the answer to whether  
2       it's formal or not. It has always been  
3       understood. And it's never been an issue.

4                   JUDGE SIPPEL: Well, I say maybe  
5       it is much ado about nothing, but I would like  
6       to have the record clear on it.

7                   MR. CARROLL: Well, Your Honor, I  
8       don't think it is much ado about nothing, and  
9       I think we can look for documents overnight.  
10      I think there are issues relating to that  
11                               of the company that  
12      would be responsive to what Your Honor is  
13      asking about.

14                  JUDGE SIPPEL: Well, okay. Let's  
15      just pursue it tomorrow.

16                  MR. CARROLL: Yes.

17                  JUDGE SIPPEL: Fair enough?

18                  MR. CARROLL: Yes.

19                  MR. PHILLIPS: Yes, sir.

20                  JUDGE SIPPEL: All right. Go  
21      ahead, Mr. Phillips.

22                  MR. PHILLIPS: Thank you, Your

1 Honor.

2 BY MR. PHILLIPS:

3 Q When Mr. Carroll was asking about  
4 whether or not you pay rights to use the  
5 Australian Open, Mr. Solomon, you said it was  
6 more complicated. Can you explain what you  
7 meant?

8 A Well, there are a number of value  
9 exchanges. Australian is particularly  
10 complicated because there are a number of  
11 value exchanges that go on between the rights  
12 holders, sublicensees, and partners. There is  
13 real value being exchanged and spent on the  
14 Australian Open by us. And it ties into an  
15 equation because we have a multiple rights  
16 scenario with our partners at ESPN.

17 It is not a one to one. It is not  
18 to mean by any stretch that the Australian  
19 Open is free. That would be wonderful, but  
20 it's not the case.

21 Q And with respect to other  
22 tournaments, do you incur significant

1 expenses, whether or not they're specifically  
2 denominated as rights in this?

3 A Very much so.

4 Q Could you describe those for us?

5 A The lion's share of our costs are  
6 related to the expense of filming live  
7 coverage. And we have a significant amount,  
8 either filming or producing. And we do it in  
9 a number of different ways. But it's with  
10 suppressed distribution and not getting the  
11 distribution revenues and the ad revenues that  
12 we would if we had broader distribution that  
13 were similar.

14 It is hard for us, for example, to  
15 produce some of the -- each tournament lasts  
16 a minimum of a week generally and the grand  
17 slams and the bigger ones two full weeks. We  
18 have to pick how many days sometimes that we  
19 have to -- that we are able to produce because  
20 we just don't have the cash to back up into  
21 earlier in the week.

22 Those earlier matches can be very,

1 very valuable because the best players play  
2 the whole time. They start on a Monday. And  
3 the best players play several times a week  
4 leading right up through the weekend to the  
5 Sunday final.

6 If Roger Federer and Rafael Nadal  
7 since we've used those as examples -- and that  
8 is certainly a great contest that we have had  
9 many times on our air live. They play on  
10 alternate days over the course of the week  
11 leading up to semis or finals, where they  
12 might meet.

13 Sometimes we have to give up some  
14 of those earlier matches that we would prefer  
15 to be able to air because they are expensive  
16 to produce.

17 JUDGE SIPPEL: Are we open again  
18 now?

19 MR. PHILLIPS: I think we're back  
20 on. Thank you.

21 (End Closed Session.)  
22

1 BY MR. PHILLIPS:

2 Q I will take a really easy one here  
3 since you mentioned Mr. Nadal and Mr. Federer.

4 A Yes.

5 Q Do you have any idea how many  
6 times they played live on Tennis Channel?

7 A I know at one point that it was  
8 certainly the majority had half on air live.  
9 And then we found a way to get repeats of  
10 almost all of them. They play regularly on  
11 our air. Many, many weeks over the course of  
12 the year, they play. You know, each one of  
13 them to get to a final has to play seen times  
14 over the course of a grand slam.

15 And that's just those two. There  
16 are many other very, very popular male and  
17 female, you know, players. The Williams  
18 sisters, for example, will have to play at  
19 least, you know, many, many times over the  
20 course of the tournament.

21 Q There was another reference you  
22 made during your testimony I wanted to

1 understand, Mr. Solomon. You mentioned NBC's  
2 coverage of the Olympics. Now, could you  
3 describe for me how NBC covered the Olympics?

4 A Yes because we sort of patterned  
5 ourselves after that particular model in a lot  
6 of what we do, in addition to covering live.  
7 So this past Winter Olympics was highly  
8 discussed in the entertainment business and  
9 among fans that, rather than air the events  
10 live at a time when people would be at work or  
11 taking the kids to school or whatever they  
12 happen to be doing during the day, NBC decided  
13 to time shift all of the Olympics into -- I  
14 believe it was all of the Olympics -- into  
15 prime time.

16 And that's kind of what we do at  
17 Wimbledon, for example, which is what we were  
18 discussing. Now, the difference at Wimbledon  
19 is that they were played earlier in the day.  
20 And many of those matches were telecast on  
21 other broadcasters, again, NBC or ESPN. Some  
22 were. Some weren't. But they are new to the

1 people who are in prime time at home.

2 In Paris, for example, where we  
3 produced the vast majority of the tournaments,  
4 of the live matches, we will also pick some  
5 that had happened during the day and many that  
6 hadn't been seen because so many happened  
7 simultaneously we have to decide whether we  
8 are going to show Rafael Nadal or Roger  
9 Federer or Maria Sharapova or Venus or Serena  
10 Williams. We may save one to put it into  
11 prime time.

12 And so that time shifting, which  
13 used to be in the old days thought of as a  
14 problem, has become something that is very  
15 valuable and very important.

16 And, again, that is why we call it  
17 anchor programming, because we just put the  
18 stuff in that rates the best. And that stuff  
19 rates really well. People want to see it.  
20 And what we get is notes that say, "Thanks for  
21 putting it in time when I can see it."

22 And it's helped bring the sport



1 back. It's helped -- just as, again, I think  
2 NBC did effectively this year. They were  
3 questioned on that move in delaying all of the  
4 -- it had already happened. And they ran it  
5 all hours later. But ultimately their ratings  
6 were very, very good. They did very well.  
7 And it was lauded by most people, a few  
8 critics out there but most really liked it.

9 JUDGE SIPPEL: Anchor programming.  
10 Is that a word of art or is that something  
11 that you just developed?

12 THE WITNESS: It is something that  
13 we have been using as a way to describe the  
14 top-rated programming on our air that can  
15 include live, which is certainly very  
16 important. And, again, we have a lot of live  
17 coverage.

18 It can include matches that aren't  
19 live but have never been seen before because  
20 maybe we had another match up against it or  
21 maybe, for whatever reason, we couldn't air it  
22 prior to its -- to running it in, say, prime

1 time. And it can include a repeat or an  
2 encore of a match that ran earlier.

3 JUDGE SIPPEL: That term is  
4 peculiar to Tennis Channel? For example,  
5 Comcast doesn't have anchor programming?

6 THE WITNESS: I think it's just --

7 JUDGE SIPPEL: I mean, it's not  
8 called that?

9 THE WITNESS: It's just a way to  
10 describe the best and most valuable  
11 programming.

12 JUDGE SIPPEL: Can you answer my  
13 question? I mean, it's a very easy question.  
14 Is it your term or is it a custom use term in  
15 the industry? Does anybody else use it?

16 THE WITNESS: I think it's a term  
17 that we have been using. It's a term that --

18 JUDGE SIPPEL: Somehow I feel I am  
19 not getting an answer. I mean, can you tell  
20 me "Yes" or "No," is this your term  
21 exclusively, Tennis Channel, or is it a term  
22 that is used throughout the industry?